

KAREN P. HEWITT  
 United States Attorney  
 WILLIAM A. HALL, JR.  
 Assistant U.S. Attorney  
 California State Bar No. 253403  
 United States Attorney's Office  
 880 Front Street, Room 6293  
 San Diego, California 92101-8893  
 Telephone: (619) 557-7046/(619) 235-2757 (Fax)  
 Email: william.a.hall@usdoj.gov

Attorneys for Plaintiff  
 United States of America

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 08CR1002-L
	)	
Plaintiff,	)	DATE: May 19, 2008
	)	TIME: 2:00 p.m.
	)	Before Honorable M. James Lorenz
v.	)	
	)	
FRANKLIN ANTONIO FIGUEROA-MONTES,	)	UNITED STATES' STATEMENT OF
	)	FACTS AND MEMORANDUM OF
	)	POINTS AND AUTHORITIES
Defendant(s).	)	

**I**

**STATEMENT OF THE CASE**

The Defendant, Franklin Antonio Figueroa-Montes (hereinafter "Defendant"), was charged by a grand jury on April 2, 2008, with violating 8 U.S.C. § 1326, deported alien found in the United States. Defendant was arraigned on the Indictment on April 11, 2007, and entered a plea of not guilty.

**II**

**STATEMENT OF FACTS**

Defendant was contacted on January 28, 2008, approximately 1:55 p.m. by United States Border Patrol Agents ("BPAs") in the 3500 block of Central Avenue in San Diego, California.

1 There, Defendant admitted that he was a citizen of Honduras with no documents entitling him to  
 2 enter or remain in the United States.

3 Defendant was placed under arrest and transported to the Chula Vista, California Border  
 4 Patrol Station's processing center. At the center, BPAs used Defendant's fingerprints to perform  
 5 a computerized check of Defendant's criminal and immigration history.

6 **B. DEFENDANT'S CRIMINAL AND IMMIGRATION HISTORY**

7 Preliminary criminal history reports show that Defendant has at least two felony  
 8 convictions in California. In 2003, Defendant was convicted in San Diego of Assault with a  
 9 Deadly Weapon, in violation of Cal. PC § 245(a)(1); he was sentenced to 313 days incarceration  
 10 (time served), with three years probation. In 2004, Defendant was convicted in San Diego of  
 11 Robbery, in violation of Cal. PC § 211; he was sentenced to 365 days incarceration, with three  
 12 years probation. In 2005, he violated his probation in both cases and was sentenced to 4 years  
 13 incarceration.

14 Defendant's was last removed to Mexico on April 26, 2007.

15 **III**

16 **UNITED STATES' MOTIONS**

17 **A. FINGERPRINT EXEMPLARS**

18 The United States requests that the Court order that Defendant make himself available for  
 19 fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427  
 20 F.3d 567, 576-77 (9<sup>th</sup> Cir. 2005) (government may have defendant fingerprinted and use criminal  
 21 and immigration records in Section 1326 prosecution). Defendant's fingerprints are not testimonial  
 22 evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical  
 23 characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against  
 24 self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9<sup>th</sup> Cir. 1969); see also United  
 25 States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987).

26 //

